

# COTTONWOOD HEIGHTS

## RESOLUTION NO. 2009-35

### A RESOLUTION APPROVING ENTRY INTO AN INDEPENDENT CONTRACTOR AGREEMENT WITH SUSANNAH HUTCHINS FOR EVENT COORDINATION SERVICES (2009-2010 FISCAL YEAR)

**WHEREAS**, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 14 July 2009 to consider, among other things, approving an independent contractor agreement (the "*Agreement*") with Susannah Hutchins ("*Ms. Hutchins*") whereunder Ms. Hutchins would act as the City's event coordinator and perform other related services to the City during the City's 2009-10 fiscal year; and

**WHEREAS**, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2009-35, shall take effect immediately upon passage.

**PASSED AND APPROVED** effective 14 July 2009.

**COTTONWOOD HEIGHTS CITY COUNCIL**



Linda W. Dunlavy, Recorder

By

  
Kelvyn H. Cullimore, Jr., Mayor

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Gordon M. Thomas	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Don J. Antczak	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Bruce T. Jones	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

**DEPOSITED** in the office of the City Recorder this 14<sup>th</sup> day of July 2009.

**RECORDED** this 15 day of July 2009.

WST\CH\524736.1

# Independent Contractor Agreement

**THIS INDEPENDENT CONTRACTOR AGREEMENT** (this "*Agreement*") is made effective 1 July 2009 by **COTTONWOOD HEIGHTS**, a municipality of the state of Utah whose address is 1265 Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and **SUSANNAH HUTCHINS**, an individual whose address is 1744 East White Avenue, Salt Lake City, UT 84106 ("*Contractor*").

## RECITALS:

- A. City sponsors a number of community events ("*Events*") each year, and has formed citizen events committees ("*Committees*") to plan, oversee and elicit community support for such Events.
- B. Contractor has significant expertise and experience in planning, coordinating and overseeing City's Events and in acting as City's liaison to the Committees.
- C. City desires to retain Contractor on an independent contractor basis to act as City's liaison to the Committees and to provide other assistance to the Committees and City in connection with the planning and staging of Events, on the terms and conditions specified in this Agreement.
- D. Contractor desires to be so retained by City as an independent contractor.
- E. The parties have determined that it is mutually advantageous to enter into this Agreement.

## AGREEMENT:

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Engagement.** City hereby engages Contractor, and Contractor hereby accepts such engagement, to perform the Services (as hereinafter defined).
2. **Services, Independent Activities.**
  - (a) **Services.** Contractor is engaged to perform the following functions for City (collectively, the "*Services*"):
    - (i) Managing City's database of volunteers, communicating with volunteers concerning service opportunities, and otherwise coordinating volunteerism in connection with the Events;
    - (ii) Actively attempting to increase the pool of City volunteers;

(iii) Acting as City's primary liaison to the chairperson of each of the Committees;

(iv) Acting as City's primary liaison to the Committees, including attending the first two meetings of each new Committee and attending at least one-half of the meetings of established Committees (including, without limitation, the Bike Committee, the Arts Council, and the Historic Committee);

(v) Assisting the Committees to identify City resources that may be available to assist in planning and staging Events; assuring that Committee members are available and scheduled to set up and take down the Event, including cleaning the Event area; assuring that events involving physical preparation have a Committee member assigned to set up and take down City event property with appropriate levels of volunteer assistance; assuring that City property being used for an event is transported only on City vehicles by City-authorized drivers, with such transportation being pre-scheduled by Contractor with City's Administrative Services Director (the "*Director*") or designee at least several business days before the event; and assuring that City employees are not used to participate in any Event without the prior approval of their supervisor.

(vi) Scheduling of physical facilities when necessary, including scheduling meeting rooms in City's offices for committees;

(vii) Assisting with correspondence concerning Events, including invitations, reminders, thank you notes, informing the Director of thank you notes sent, and miscellaneous correspondence;

(viii) Timely and appropriately responding to inquiries regarding Events;

(ix) Maintaining a comprehensive database and a summary list of financial sponsors of City events and submitting current copies of such database and list to the Director annually and as requested;

(x) Working closely with City's finance department (the "*Finance Department*") to generate a realistic budget for each Event and using diligent efforts to assure that such approved budget is followed;

(xi) Performing, or personally overseeing, all purchasing activities of the Committees in compliance with City's procurement ordinances, and maintaining and forwarding to the Finance Department financial records (including vendor receipts) for each Event;

(xii) Coordinating with other entities where City is a major sponsor (such as the Movies in the Park event) so that City's logo, flag and banner is appropriately displayed;

(xiii) Coordinating the design and construction of City's float (the "*Float*"), if any, with City's float contractor/vendor, and scheduling and coordinating the use of the Float in

City's Butlerville Days parade and in all other parades in other communities in which City's manager directs that the Float should appear;

(xiv) Coordinating City's birthday party Event, anticipated to be held in January 2010 and every five years thereafter;

(xv) Coordinating Event publicity with City's public relations specialist; obtaining and providing to City's webmaster and public relations specialist at least ten good-quality digital photographs of each Event within five days after the Event (City will provide a City-owned camera for Contractor's use in taking such photographs); and provide City photographs for the community calendar and similar uses, as requested by the Director;

(xvi) Attending City staff meetings when requested by the Director;

(xvii) Reporting at city council meetings as directed by the Director;

(xviii) Regularly (at least weekly, and more frequently as directed) reporting in writing to the Director concerning the status of the Events and the Committees, including, without limitation, how the Event is being publicized, a list of Committee members and other volunteers involved in the Event, budgets, suggestions on how future such Events may be improved, etc.;

(xix) Timely updating as needed all information for City Events on the [nowplayinginutah.com](http://nowplayinginutah.com) website or other community event oriented website(s) as determined by the Director;

(xx) Providing to City's webmaster the name of and contact information for the current chair of each Committee (including email address and telephone number); each chair's written authorization for City to post such contact information on City's website; and the dates, times and places of all scheduled meetings of each Committee, continuously updating all of such information as needed.

(xxi) Quarterly, writing a three to four paragraph article (with accompanying photo) spotlighting a City resident, employee, volunteer, etc. approved by City's municipal council (the "*Council*"). Names of proposed subjects would be generated by the Council (with input from any interested parties), and then would be submitted by Consultant. Once the subject has been decided and the article written, the article would be reviewed and edited by City's manager and submitted to City's website technician for publication on City's website and the Valley Journal. Consultant shall submit the proposed "Community Spotlight" articles to City's manager no later than the week before the Valley Journal deadline for its July, October, January and April editions.

(xxii) To the extent reasonably possible, timely providing to City's webmaster agendas for each Committee meeting.

(xxiii) Performing such other services as the Director reasonably may request from time to time.

Contractor shall be actively involved in personally performing the Services, devoting Contractor's time, attention and best efforts to City's affairs. In performing the Services, Contractor shall have reasonable access to City's offices and database (including remote access) on such terms and conditions as City may impose.

If, through performance of the Services, Contractor becomes aware of political issues potentially affecting City, then Contractor promptly shall report such issues to the Director.

(b) Independent Activities. As an independent contractor, Contractor shall be freely entitled to expend time for personal or outside business, charitable or professional activities. Such outside activities shall not be deemed a breach of this Agreement, provided that they do not materially interfere with the Services to be rendered to City hereunder. Contractor shall not, without City's express prior written consent (which consent shall not be unreasonably withheld), engage in any activity competitive with or adverse to City's interests, whether alone, as a partner, or as an officer, director, employee, shareholder, member or owner of any other entity, or as a trustee, fiduciary, or other representative of any other activity.

3. Term. Subject to the provisions regarding termination set forth in section 8 below, Contractor's term of engagement shall commence on 1 July 2009 and shall terminate on 30 June 2010. Thereafter, the term of this Agreement may be extended for subsequent (July 1<sup>st</sup> - June 30<sup>th</sup>) fiscal years of City upon the written consent of both City and Contractor.

4. Standards. Contractor shall perform Contractor's duties under this Agreement in accordance with (a) all legal requirements; (b) all applicable professional standards and practices; and (c) such other standards as may, from time to time, be applicable during the term of this Agreement.

5. Compensation. City shall pay Contractor for performing the Services and staging the Events as follows:

<u>Event</u>	<u>Payment</u>
Meet the Candidates	\$1,000
Easter Egg Hunts	\$2,500
Relay for Life	\$2,500
Butlerville Days, including Bike Ride and Float Coordination	\$9,750

Bark in the Park	\$2,500
Haunt at City Hall	\$1,000
Saturday with Santa	\$2,000
City Birthday Party	\$2,000
Quarterly Community Spotlight (July, October, January, April)	\$150 each
Ongoing Management of Volunteer Database	\$500
Ongoing Meetings With Committees and Performance of Ongoing Services	\$2,500

Contractor shall be paid the Event-based fees (items 1-9 above) following completion of such Event. Contractor shall be paid the \$3,000 due for ongoing management of the volunteer database, the ongoing meetings with Committees, and the performance of ongoing Services in 12 monthly installments of \$250 each. Contractor shall bill City monthly, by the 20<sup>th</sup> day of the month, for Services performed in the immediately preceding calendar month. Additional Events may be added by mutual agreement of Contractor and City.

Contractor also shall be entitled to reimbursement of any actual, out-of-pocket costs necessarily advanced by Contractor in her performance of the Services in accordance with City's reimbursement policies. City may provide Contractor with a City-owned credit card and a City-owned Costco card to facilitate Event purchasing by Contractor. Contractor's use of such cards shall be subject to City policies and procedures.

6. **Bonus for Increasing Volunteer Database.** It is important to City to increase the pool of people who are willing to volunteer services in connection with Events. Consequently, City will pay to Contractor a \$500 bonus for increasing City's current pool of volunteers by at least 50% through personal contacts/networking, e-mails, advertisements on City's website and in City's pages in the Cottonwood-Holladay Journal, etc. Such increase shall be subject to City's reasonable verification through the Director or designee.

7. **Status.** In performing the Services, Contractor shall at all times be an independent contractor, and not an employee, of City. As an independent contractor, Contractor shall not be entitled to any benefits or perquisites offered by City to its employees, such as insurance coverage, paid vacation, retirement plan funding, or any other items. Instead, Contractor's sole compensation for performance of the Services shall be the compensation and costs reimbursement described in sections 5 and 6 above.

8. **Termination.** This Agreement shall be terminated upon the happening of any of the following events:

(a) **For Cause.** For cause upon ten (10) days' prior written notice and opportunity to cure by the terminating party where the other party has materially breached any provision of this Agreement or violated any statutory or common law duty or obligation to the terminating party, including, without limitation, Contractor's failure to perform any of Contractor's obligations hereunder to City's reasonable satisfaction at any time;

(b) **Without Cause.** Without cause at any time upon at least 90 days' prior written notice by a party to the other;

(c) **Mutual Consent.** Whenever City and Contractor mutually agree in writing to terminate this Agreement;

(d) **Expiration of Term.** Expiration of the term of this Agreement without the parties' mutual written agreement to extend such term for a subsequent fiscal year;

(e) **Death.** Upon Contractor's death; or

(f) **Conduct.** If Contractor engages in any fraudulent or dishonest conduct of any type whatsoever, or if City reasonably determines (in view of prevailing community standards in Cottonwood Heights, Utah) that Contractor has engaged in personal conduct which would injure the reputation of City or otherwise adversely affect City's interests if Contractor were retained as an independent contractor of City.

9. **Rules, Regulations and Policies.** Contractor shall observe and comply with the policies, rules and regulations of City as adopted by City (whether administratively or through action of the Council) respecting performance of the Services, and shall carry out and to perform orders, directions and policies announced to Contractor by City from time to time, either orally or in writing.

10. **Nondisclosure of Confidential Information.** Contractor acknowledges that, as a result of her engagement by City, Contractor may be provided access to, and otherwise may have the opportunity to acquire and use, confidential information of a special and unique nature and value relating to City's affairs that is not known to the general public. Such information made known to or learned by Contractor as a result of Contractor's engagement hereunder shall be referred to herein as the "*Confidential Information.*"

As a material inducement to City to engage Contractor pursuant to this Agreement, Contractor covenants and agrees that Contractor shall not, at any time during or following the term of this Agreement, directly or indirectly divulge or disclose to any third party, for any purpose whatsoever, any of the Confidential Information which has been obtained by or disclosed to Contractor as a result of her engagement by City.



In the event of a breach or threatened breach by Contractor of any of the provisions of this section 10, City, in addition to and not in limitation of any other rights, remedies or damages available to City at law or in equity, shall be entitled to injunctive relief restraining and permanently prohibiting any such breach by Contractor or any other person or entity directly or indirectly acting for or with Contractor.

Upon termination of this Agreement, Contractor shall not be entitled to keep or preserve records, files, documents and information of any type which are particular to City. Any and all records, files, documents and information of all types prepared in connection with Contractor's engagement hereunder are and shall remain City's property, notwithstanding that such items may have been prepared, transcribed or generated by Contractor.

11. **Equipment.** To facilitate Contractor's performance of the Services, and to assure more complete voice and e-mail communication between City and Contractor, during the term of this Agreement City shall provide to Contractor (a) a cellular telephone on the same terms and conditions as City's other key appointed officers and employees, subject to Contractor's obligation to reimburse City for any personal usage of such device in accordance with any reimbursement policy adopted from time to time by City; and (b) a laptop computer with (among others) word processing and e-mail functions, including the capacity to remotely access portions of City's database.

12. **General Provisions.** The following provisions are also an integral part of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Time of Essence. Time is the essence of this Agreement.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) Attorneys' Fees. In the event any action or proceeding is brought by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(k) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above or to such other address(es) as a party may specify to the other in writing at any time during the term of this Agreement.

(l) Assignment. Contractor may not assign her rights or delegate her duties hereunder to any third party without City's prior written consent, which City may withhold in its sole, unfettered, discretion.

**DATED** effective the date first above written.

**CITY:**

**ATTEST:**

**COTTONWOOD HEIGHTS**, a Utah municipality

\_\_\_\_\_  
**Linda Dunlavy**, Recorder

By: \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr.**, Mayor

**CONTRACTOR:**

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\_\_\_\_\_  
**Susannah Hutchins**